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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 278

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.

Appellants.

ONE BUCK, INDIVIDUALLY AND AS MEMBER OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

MOTION OF APPELLEES TO SUBSTITUTE AND CONTINUE AGAINST SUCCESSORS IN OFFICE.

THOMAS G. HIGHT,
FRANK J. WIDEMAN,
LOUIS D. FROBACH,
HERMAN FINKELSTEIN,
MARLEY P. CALDWELL,
Counsel for Appellees.

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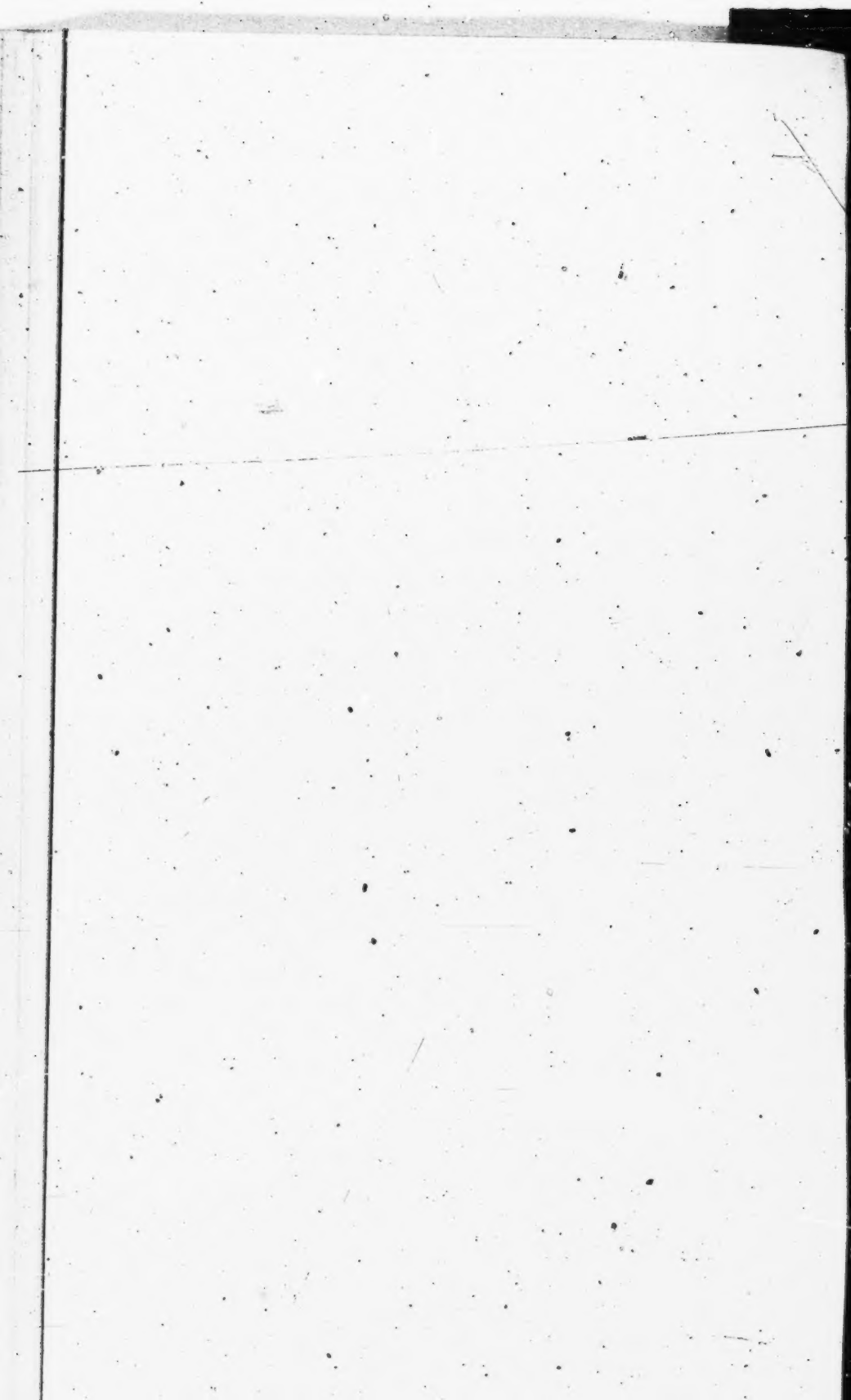
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 276

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF FLORIDA; E. DIXIE BEGGS, JR., INDIVIDUALLY AND AS STATE ATTORNEY FOR THE FIRST JUDICIAL CIRCUIT OF FLORIDA; O. C. PARKER, JR., INDIVIDUALLY AND AS STATE ATTORNEY FOR THE SECOND JUDICIAL CIRCUIT OF FLORIDA; A. K. BLACK, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE THIRD JUDICIAL CIRCUIT OF FLORIDA; WILLIAM A. HALLOWES, III, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE FOURTH JUDICIAL CIRCUIT OF FLORIDA; J. W. HUNTER, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE FIFTH JUDICIAL CIRCUIT OF FLORIDA; CHESTER B. McMULLEN, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE SIXTH JUDICIAL CIRCUIT OF FLORIDA; MURRAY SAMS, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE SEVENTH JUDICIAL CIRCUIT OF FLORIDA; J. C. ADKINS, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA; MURRAY W. OVERSTREET, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE NINTH JUDICIAL CIRCUIT OF FLORIDA; L. GRADY BURTON, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE TENTH JUDICIAL CIRCUIT OF FLORIDA; G. A. WORLEY, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA; ROY D. STUBBS, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA; J. REX FARRIOR, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE THIRTEENTH JUDICIAL CIRCUIT OF FLORIDA; JOHN H. CARTER, JR., INDIVIDUALLY AND AS STATE ATTORNEY FOR THE FOURTEENTH JUDICIAL CIRCUIT OF FLORIDA AND LOUIS F. MAIRE, INDIVIDUALLY AND AS STATE ATTORNEY FOR THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,

Appellants,

VS.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS; CARL FISCHER, INC., G. SCHIRMER, INC., IRVING BERLIN, INC., DEEMS TAYLOR, OLEY SPEAKS, WILLIAM J. HILL, ANNE PAUL NEVIN, ELLA HERBERT BARTLETT AND JANE SOUSA,

Appellees.

MOTION TO SUBSTITUTE AND CONTINUE AGAINST SUCCESSOR IN OFFICE.

The appellees in the above entitled cause respectfully move this Court for leave to substitute George Couper Gibbs, individually and as Attorney General of the State of

Florida, and to continue this action against the said George Couper Gibbs in the place and stead of Cary D. Landis, deceased, and allege:

1. Appellee American Society of Composers, Authors and Publishers (hereinafter referred to as the "Society") is an unincorporated association of more than 1,000 composers, authors and publishers of copyrighted musical compositions. All members of the Society have transferred to it for a period ending December 31, 1940, the exclusive right of public performance for profit of their copyrighted musical compositions. Pursuant to the rights granted to it by its members, the Society has issued to users of music in the State of Florida, licenses to perform publicly for profit the copyrighted musical compositions of its members, the license fees being determined and fixed by agreement between the Society (on behalf of all its members jointly) and the respective users of music.

2. On June 9, 1937, the State of Florida enacted a law regulating in certain cases and prohibiting in other cases, the licensing of copyrighted musical compositions and the bringing of actions for infringement in the Federal Courts (Chapter 17807, Laws of Florida, 1937, General Laws, Volume I, pp. 204-214, inclusive). That Statute will be referred to hereinafter as the "State Statute". A copy of the State Statute is hereto annexed as Exhibit "1".

3. On April 4, 1938, a Statutory District Court for the Northern District of Florida, consisting of Hon. Rufus E. Foster, Circuit Judge, Hon. Louie W. Strum and Hon. A. V. Long, District Judges, made and entered a decree on motion of appellees granting an interlocutory injunction restraining appellants from enforcing said State Statute. The decree was conditioned upon posting a bond, which bond has already been posted, a copy thereof being on file in

this Court. A copy of the said decree granting an interlocutory injunction is hereto annexed as Exhibit "2".

4. On April 25, 1938, the United States District Court for the Northern District of Florida made and entered an order allowing all the above named appellants to appeal to this Court from the said decree granting an interlocutory injunction. A copy of such order is on file in this Court.

5. On August 15, 1938, appellants filed the record and docketed the appeal in this Court.

6. On the same day, to wit, August 15, 1938, the appellant State's Attorneys appeared by Tyrus A. Norwood, Assistant Attorney General of the State of Florida and by Andrew W. Bennett and Lucien H. Boggs, as their attorneys, and filed in this Court a "Suggestion of Death" of the appellant Cary D. Landis, such death having occurred on May 10, 1938. A copy of the "Suggestion of Death" is annexed hereto as Exhibit "3".

7. On the same day, to wit, August 15, 1938, the appellant State's Attorneys moved this Court to vacate the interlocutory injunction entered below and to direct dismissal of the bill of complaint herein on the alleged grounds that this appeal has become moot; that the Attorney General is a necessary party to the action; that the former Attorney General, who was enjoined below, is deceased, and that his successor George Couper Gibbs has not been made a party to this action.

8. On September 7, 1938, appellees filed in this Court their answer to the said motion of appellant State's Attorneys, pointing out the facts hereinafter set forth.

9. George Couper Gibbs was appointed Attorney General of the State of Florida to succeed the said Cary D. Landis, deceased, on May 16, 1938. He is now the duly appointed, qualified and acting Attorney General of that State.

10. On May 31, 1938, appellant State's Attorneys filed in the court below a "Suggestion of Death" of appellant Cary D. Landis, and moved the court below for an order dismissing this suit on the same grounds that have been advanced by said appellants in their motion to dismiss heretofore filed in this Court.

11. On June 24, 1938, appellees served upon appellants and thereafter upon George Couper Gibbs, a motion for leave to file a supplemental bill of complaint substituting said George Couper Gibbs as a party to the action in the place and stead of Cary D. Landis, deceased, pursuant to Section 11, Subdivisions (b) and (c) of the Act of February 13, 1925 (Title 28, U. S. C., Section 78).

12. Both the appellants' motion to dismiss and the appellees' motion to substitute were heard together by the court below on July 11, 1938, whereupon on said date the court below entered an order denying appellant State's Attorneys' motion to dismiss, on the ground that they "are necessary parties defendant to the suit and, therefore, the cause did not abate as to them upon the death of said Honorable Cary D. Landis"; and denied appellees' motion to substitute, on the ground that "the supplemental bill, for which leave to file is asked, in effect substitutes Honorable George Couper Gibbs as a party defendant in the place of Honorable Cary D. Landis, deceased. On authority of *ex parte LaPrade*, 289 U. S. 444, said motion is denied". A copy of said order of July 11, 1938 is annexed hereto as Exhibit "4".

13. Section 9 of the State Statute defines the duties of the Attorney General and the State's Attorneys thereunder as follows:

" . . . it shall be the duty of the State's attorneys in their respective circuits, under the direction of the Attorney-General to institute proceedings, civil or criminal, or both, under the terms hereof, against any

combination as defined in Section 1 hereof, and against any of its members, agents or representatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section 1 hereof. * * *

14. The alleged combinations declared unlawful by Section 1 of the Statute include any society of authors, composers or publishers of copyrighted musical compositions constituting a substantial number of persons, firms or corporations within the United States owning or controlling copyrighted musical compositions when one of the objects of the combination is the fixation of license fees for any use of such copyrighted musical compositions for private or public performance for profit. Section 1 makes unlawful any attempted collection of license fees by such alleged combination, makes each attempted collection a separate offense, and subjects all persons involved to the terms and penalties of the Statute.

15. Section 3 of the State Statute declares void and non-enforceable all existing contracts between combinations declared unlawful under Section 1, and it provides that any agent, member or representative of such combination attempting to enforce any existing contract shall be subject to the penalties of the Statute.

16. Section 4-A permits any radio broadcasting station to perform without payment whatsoever any of the musical compositions owned or controlled by any combination declared unlawful by Section 1.

17. Radio broadcasting stations transmitting from without the State of Florida copyrighted musical compositions of members of a combination declared unlawful by Section 1 to broadcasting stations within the State of Florida, are prohibited from collecting license fees on behalf of any such

combination under pain of suffering the penalties of the Statute (Section 4-B).

18. Motion picture and other theatres are authorized to perform publicly for profit the copyrighted musical compositions of any combination declared unlawful by Section 1 without making any payment or receiving any license fee or other exaction therefor (Section 5-A).

19. Theatres within the State of Florida are authorized to use free of charge any copyrighted musical compositions of a combination declared unlawful by Section 1 whenever such compositions are furnished from without the State under contract between such theatres and persons outside the State. Any attempt to collect license fees or other exactions for such use of copyrighted musical compositions is made unlawful (Section 5-B).

20. Where the owner of any theatre or broadcasting station or similar place of amusement publicly performs for profit any copyrighted musical compositions is affiliated with any person, firm or corporation outside the State from whence such copyrighted musical compositions emanate, either by radio, sound production instrumentalities or by furnishing persons to play or sing such music within the State, the responsibility and liability for the use of such copyrighted musical compositions thus emanating from outside the State of Florida is limited to and must rest on such affiliated person, firm or corporation from outside the State who originates the broadcasting or the performance or the sound production instrumentality, or sends the personal singers or performers into the State of Florida. In such case, the owner of the copyrighted composition is prohibited from suing for infringement, loss or damage within the boundaries of the State of Florida for such performance of the copyrighted musical compositions, and such copyright

owner is limited to a recovery against the person, firm or corporation outside the State of Florida (Section 6).

21. Violation of the Statute is made punishable by a fine of not less than \$50 or more than \$5,000, and by imprisonment of not less than one or more than ten years (Section 8). In any prosecution the defendant may be compelled to furnish evidence against itself, and failure to do so subjects defendant to a fine of \$100 for each day of its refusal (Sections 11-A, 11-B). The penalties of the State Statute are cumulative and in addition to the rights and remedies under other statutes of the State of Florida (Section 13). If appellees are a combination in restraint of trade under the Florida Laws, they are subject to *additional* penalties of not less than \$50 or more than \$5,000, and/or imprisonment from one to ten years under Florida Compiled Laws (1927), Article 12, Section 7948. Under that section each day during the continuance of the violation is made a separate offense.

22. The late appellant Cary D. Landis and appellant State's Attorneys threatened to enforce this State Statute and the penalties thereof against appellees if they should violate any of its provisions, and more particularly if appellees should attempt to sue for infringement of their copyrights in any Federal Court in the State of Florida. Such threat was made by a letter dated March 7, 1938, addressed to the three-judge court below written by Tyrus A. Norwood, who is presently acting as Assistant Attorney General on behalf of George Couper Gibbs, and on behalf of the appellant State's Attorneys, and previously acted as Assistant Attorney General for the late Cary D. Landis. In said letter, the said Tyrus A. Norwood wrote "*if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General and State's At-*

torneys would be compelled to prosecute it under the provisions of Section 1 of the Act, regardless of whether the suit was brought in the State or Federal Courts". A copy of that letter is annexed hereto as Exhibit "5".

23. Said Tyrus A. Norwood has continued to act in the same capacity on behalf and as representative of the present Attorney General of the State of Florida, George Couper Gibbs, as he did on behalf and as representative of the late Cary D. Landis; and said Tyrus A. Norwood, in his capacity as Assistant to Attorney General George Couper Gibbs, and on information and belief acting under instructions from him, has continued to appear in this action, and now appears on behalf of the appellant State's Attorneys. In correspondence relating to this very appeal, said Tyrus A. Norwood has represented himself on many occasions as acting on behalf of George Couper Gibbs. A typical example of such correspondence is annexed hereto as Exhibit "6".

24. Upon information and belief, said George Couper Gibbs, directly and through his representative and assistant Tyrus A. Norwood, has adopted and continues and threatens and proposes to continue the same course of conduct in the enforcement of this State Statute that was adopted by his predecessor in office, Cary D. Landis in enforcing the State Statute against appellees. Upon information and belief, said Tyrus A. Norwood has called to the attention of said George Couper Gibbs the letter of his predecessor, Exhibit "5" hereto annexed, and said George Couper Gibbs proposes likewise to direct appellant State's Attorneys to prosecute appellees if the pending interlocutory injunction against them is vacated.

25. The State Statute imposes the specific duty on the Attorney General and on the State's Attorneys to enforce such Statute, and George Couper Gibbs has never taken

the position that the Statute is unconstitutional or legally unenforceable, but on the contrary, said Tyrus A. Norwood and said Cary D. Landis and said appellant State's Attorneys have taken the position that the Statute is constitutional and would be enforced.

26. There is a substantial need for continuing and maintaining this suit against said George Couper Gibbs, as well as against appellant State's Attorneys.

27. No application for the relief prayed for herein has been made, except the motion in the court below, hereinabove referred to.

28. The death of appellant Cary D. Landis occurred less than six months prior to the date hereof, to wit, on May 10, 1938.

29. Appellees annex hereto their proposed supplemental bill of complaint, bringing the said George Couper Gibbs into this action and substituting him in place of Cary D. Landis, deceased. A copy of said supplemental bill of complaint is annexed hereto as Exhibit "7".

WHEREFORE appellees pray that this Court enter an order herein pursuant to Rule 25, Subdivision (d) of the Rules of Civil Procedure for the District Courts of the United States, and Section 11, Subdivisions (b) and (c) of the Act of February 13, 1925 (Title 28, U. S. C., Section 78), substituting George Couper Gibbs in the place and stead of Cary D. Landis, deceased, and for such other and further relief as to this Court may seem just and proper.

o THOMAS G. HAIGHT,
FRANK J. WIDEMAN,
LOUIS D. FROHLICH,
HERMAN FINKELSTEIN,
MANLEY P. CALDWELL,
Counsel for Appellees.

EXHIBIT "1".**Senate Bill No. 679.**

AN ACT declaring to be an unlawful monopoly and its purposes to be in restraint of trade, any combination of persons, firms or corporations which determine the amount of money to be paid to it or to its members for the privilege of rendering privately or publicly for profit copyrighted vocal or instrumental musical compositions, when such combination is composed of a substantial number of all musical composers, copyright owners, or their heirs, successors or assigns; to require each composer and each author of vocal or instrumental copyrighted musical compositions to act independently of any combination as herein declared unlawful in determining license fees and other rights; to require the author, composer and publisher to specify upon the musical composition the selling price thereof, including public performance for profit; to declare that any purchaser thereof, who pays such price therefor shall have the right to render such music privately or publicly for profit; to declare all existing agreements requiring license fees or other exactions for the privilege of rendering copyrighted musical compositions publicly for profit, made with any combination, firm or corporation herein declared unlawful, to be void and non-enforceable; to permit the present owners, possessors and users of such copyrighted music to render the same privately or publicly for profit without interference by such unlawful combination; to provide for the protection of theatres, moving picture houses, hotels, places for education and public performance or amusement, radio broadcasting and radio receiving and radio re-broadcasting stations affiliated with other persons, firms or corporations outside of the State of Florida, against the collection of license fees or other exactions by such out of the State affiliates for or on account of any combination herein declared unlawful; to provide all liability for any infringement of copyrighted musical compositions conveyed by radio broadcasting, air, wire, electrical transcription or

sound producing apparatus, or by personal performance coming outside of the State of Florida and used herein to rest exclusively on the out of the State person, firm or corporation originally sending the same into this State for use herein; to provide penalties for the violation hereof; to empower the State's Attorney, under the direction of the Attorney General, upon the complaint of any party aggrieved by any violation hereof to proceed to enforce the penalties hereof against such combination and any of its members, agents or representatives; to empower any party aggrieved by any violation hereof to proceed in his own right hereunder; to define the legal procedure required to carry out the provisions herein; to provide for the recovery of costs, expenses and attorney's fees; to provide that the terms of this Act shall be cumulative; to provide that any part of this Act declared illegal shall not affect the validity of the remaining parts hereof.

Be it enacted by the Legislature of the State of Florida:

SECTION 1. It shall be unlawful for authors, composers, publishers; owners, or their heirs, successors or assigns, of copyrighted vocal or instrumental musical compositions to form any society, association, partnership, corporation or other group or entity, called herein a combination, when the members therein constitute a substantial number of the persons, firms or corporations within the United States who own or control copyrighted vocal or instrumental musical compositions, and when one of the objects of such combination is the determination and fixation of license fees or other exactions required by such combination for itself or its members or other interested parties for any use or rendition of copyrighted vocal or instrumental musical compositions for private or public performance for profit; and the collection or attempted collection of such license fee or other exaction so fixed and determined by any member, agent, or representative of such combination herein declared unlawful, from any person, firm or corporation within this State, including theatres, radio, receiving, radio broadcasting and radio re-broadcasting stations, moving picture

houses, hotels, restaurants, clubs, dance halls, recreation rooms, pavilions, colleges, universities, churches, or any one who uses music in the conduct of his business, or the officers, directors, proprietors, managers, owners or representatives thereof, who render or cause to be rendered or permit to be rendered such copyrighted vocal or instrumental musical compositions privately or publicly for profit through personal performance, or through radio or any instrumentality or sound producing apparatus, shall be and the same are hereby declared unlawful and illegal; and such license fees or other exactions by such combination or its agents, members, or interested parties shall not be collected in any Court within the boundaries of this State; and such collection or attempted collection of such license fee or other exaction by such combination or its agents, members or interested parties, shall be a separate offense hereunder; and any such combination of authors, composers or publishers, or their heirs, successors or assigns, as herein defined, is hereby declared to be an unlawful monopoly in this State; and the fixing of prices or exactions for use or rendition of copyrighted musical compositions and the collecting or attempting to collect such license fees or other exactions by it or for its members or other interested parties, is hereby declared illegal and in restraint of trade; and such collection or attempted collection is declared to be an intrastate transaction within this State, and shall be subject to the terms and penalties of this Act.

SECTION 2-A. All authors, composers, or publishers, and their heirs, successors or assigns, shall specify or cause to be specified legibly upon the musical compositions, in whatever form the same may be published, printed, manufactured or otherwise prepared for use or rendition, the selling price thereof so arrived at and determined for all uses and purposes; and when any purchaser or user acquires the same within this State and pays the selling price so specified thereon to the seller or publisher of such musical composition, then said purchaser or user may use or render, or cause or permit to be used or rendered, the said copyrighted musical composition by persons individually or with other performers, actors and singers, or by an individual instru-

ment player, or by orchestras and bands, or over or through or by means of radio loud speakers, radio receiving, radio broadcasting and radio re-broadcasting stations, electrical transcriptions, musical records, sound apparatus or otherwise, and the same may be so rendered either privately or publicly for profit without further license fees or other exactions; and such copyrighted owner or proprietor in such event shall be deemed to have received full compensation for the rendition and all uses of such musical compositions for private and public performance for profit.

SECTION 2-B. In the event any author, composer or publisher, or any of his heirs, successors or assigns, fails or refuses to affix on the musical composition the selling price, and collect the same, for private or public performances for profit, at the time and in the manner specified in this Act, then any person, firm or corporation, in this State who may have purchased and paid for such copyrighted musical composition, may use the same for private or public performance for profit without further license fee or other exaction; and such person, firm or corporation so using or rendering the same shall be free from any and all liability in any infringement or injunction suit, or in any action to collect damages instituted by such copyright proprietor or owner in any Court within this State.

SECTION 2-C. Nothing in this Section or this Act shall be construed to give to any purchaser of copyrighted musical compositions, as herein provided, the right to resell, copy, print, publish or vend the same; nor to prevent authors and composers from determining and fixing the price to be charged for the use or rendition of their copyrighted musical compositions, provided such authors and composers act independently of any such combination as in Section 1 hereof declared unlawful.

SECTION 3: All existing contracts, agreements or licenses now existing within this State, made by any person, firm or corporation with any combination declared unlawful under Section 1 hereof, are hereby declared void and non-enforceable in any Court within this State, and are hereby declared to have been entered into as intra-state transactions with such

unlawful combinations and in restraint of trade. And all such contracts, agreements, licenses and the attempted enforcement thereof may be enjoined by any person, firm or corporation sought to be bound thereby; and any agent, member or representative of such unlawful combination enforcing or attempting to enforce the terms of such existing contract, agreement or license, shall be guilty of a violation of the terms of this Act; and for any collection or attempted collection of moneys set out in the illegal contract, agreement, or license, shall be subject to the penalties of this Act.

SECTION 4-A. Any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, shall be and is hereby authorized to receive, broadcast and re-broadcast copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms hereof.

SECTION 4-B. When such radio receiving, radio broadcasting or radio re-broadcasting station is affiliated with any other person, firm or corporation owning, leasing or operating a radio broadcasting station outside this State from whence copyrighted vocal or instrumental musical compositions originate or emanate, and which are received, used, broadcast or re-broadcast within this State, in accordance with the terms of any affiliation agreement or other contract, then such person, firm, or corporation owning, leasing, operating or managing a radio broadcasting station outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any person, firm or corporation who owns, leases, operates or manages a radio broadcasting, radio receiving or radio re-broadcasting station within this State, any herein declared non-collectible license fee or other exaction, for the purpose of paying or repaying the same outside this State to any combination;

or its members, stockholders or other interested parties, declared unlawful by Section 1 hereof; and any such person, firm or corporation, collecting or attempting to collect such license fee or other exaction against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination as declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof.

SECTION 5-A. Any person, firm or corporation who owns, operates or manages any theatre or theatres, moving picture house or houses, or a similar place or places for amusement and public performance within this State, shall be and is hereby authorized to receive, use and render, or cause to be received, used and rendered, by the personal performance of artists, singers, musicians, orchestras, bands, or actors, or by loud speakers, radio sound production or reproduction apparatus or instrumentalities, or electrical transcriptions, or by any other means of rendition whatsoever, copyrighted vocal or instrumental musical compositions, the copyrights of which are owned or controlled by any such combination declared unlawful by Section 1 hereof, without the payment, to such combination, or to its agents, representatives or assigns, of any license fee or other exaction declared illegal and non-collectible by the terms of this Act.

SECTION 5-B. When such theatre or theatres, moving picture house or houses, or other places for amusement, or performance is or are affiliated or under contract in any manner whatsoever with any other person firm or corporation furnishing in any form or manner copyrighted musical compositions from outside this State, or supplying such persons, firms or corporations in this State with radio broadcasts or electrical transcriptions, sound production instrumentalities or apparatus, or artists, performers, musicians, singers, players, orchestras, bands or other artists or talent, wherein or whereby copyrighted vocal or instrumental musical com-

positions are privately or publicly rendered for profit, then such person, firm or corporation outside this State, shall be and is hereby prohibited from in any manner charging or attempting to charge, or collecting or attempting to collect, from any such person, firm or corporation who owns, leases, operates or manages such theatre or theatres, moving picture house or houses, or other places for amusement or public performance within this State, any license fee or other exaction for the purpose of paying or repaying the same to any such combination declared unlawful by Section 1 hereof for the use, rendition or performance of such copyrighted musical compositions; and any such person, firm or corporation, collecting or attempting to collect, such license fee or other exaction from outside this State against such persons, firms or corporations within this State for the purpose of paying or reimbursing itself for having paid any such license fee or other exaction herein declared unlawful and non-collectible, shall be deemed guilty of a violation of the provisions of this Act; and such person, firm or corporation from without this State is hereby declared to be an agent and representative of such combination declared illegal and unlawful by Section 1 hereof, and shall be subject to all the penalties hereof.

SECTION 6. Whenever any person, firm or corporation who owns, leases, operates or manages a radio receiving, radio broadcasting or radio re-broadcasting station, or theatre or moving picture house or similar place for amusement and public performance or for the rendition in any manner of copyrighted vocal or instrumental musical compositions, and which radio stations and theatres, and other persons, firms or corporations aforementioned, are affiliated with persons, firms or corporations outside this State from whence said copyrighted vocal or instrumental musical compositions originally emanate either by radio, sound production instrumentalities or apparatus, or by furnishing a person or persons to play or sing such music within this State, then the responsibility and liability for the use of all copyrighted vocal or instrumental musical compositions thus emanating from outside this State shall rest with and be upon such affiliated person, firm or corporation from out-

side this State who originates the broadcasting or the performance or the sound production instrumentality or apparatus, or sends the personal singers or performers into this State; and the owner or proprietor of the copyrighted vocal or instrumental musical compositions shall be and is hereby prohibited from suing for infringement, loss or damage within the boundaries of this State, for the use or rendition of such copyrighted vocal or instrumental musical compositions because such persons, firms or corporations used, rendered or performed the same within the State; and said copyright owner or proprietor shall make his collection therefor from the person, firm or corporation from outside this State from whence the use of said copyrighted vocal or instrumental musical compositions originally emanated; the use or rendition by radio broadcast, radio re-broadcast or sound producing instrumentalities or apparatus, or electrical transcription, or by the personal performance of singers, players and musicians sent into this State or otherwise, of such copyrighted musical compositions within this State in the manner set forth in this section; shall be considered, for the purpose of this Act, as intrastate business of this State and subject to the control, regulation and prohibitions set forth in this Act notwithstanding that such copyrighted musical compositions originated or emanated from without this State.

SECTION 7-A. Any person, firm or corporation within this State who shall act as the representative of any combination herein declared unlawful as defined in Section 1 hereof, shall, for the purpose of this Act, be deemed an official representative and agent of such unlawful combination and shall be construed to be doing business within this State, and service of any process against such combination may be had upon such representative or the agent of such representative as herein defined; and when so served, such process shall have the same legal effect as if served upon a duly elected officer or managing agent or other official representative upon whom service might otherwise be made upon such combination within this State.

SECTION 7-B. Furthermore, any person or persons who negotiates for, or collects, or attempts to collect license

fees or other exactions, or who acts as the representative or agent for any combination declared unlawful in Section 1 hereof, shall, for the purpose of this Act, be considered as a part of said unlawful combination; and such person, firm, or corporation shall be subject to all the penalties in this Act provided for violations thereof.

SECTION 8. Any combination as in Section 1 hereof declared to be unlawful, and any other person, firm or corporation acting or attempting to act within this State in violation of the terms of this Act, or any representative or agent of any person, firm or corporation who aids or attempts to aid any such unlawful combination as defined in Section 1 hereof, in the violation of any of the terms of this Act, in any manner whatsoever, shall be punished by a fine of not less than \$50.00 or more than \$5,000.00, and by imprisonment in the penitentiary not less than one or more than ten years, or by either such fine or imprisonment.

SECTION 9. The several Circuit Courts of this State shall have jurisdiction to prevent and restrain violations of this Act, and, on the complaint of any party aggrieved because of the violation of any of the terms of this Act anywhere within this State, it shall be the duty of the State's attorneys in their respective circuits, under the direction of the Attorney-General, to institute proceedings, civil or criminal, or both, under the terms hereof, against any combination as defined in Section 1 hereof, and against any of its members, agents or representatives as herein defined, to enforce any of the rights herein conferred, and to impose any of the penalties herein provided, or to dissolve any such combination as declared unlawful by Section 1 hereof. In civil actions such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of have been duly notified of such petition, the Court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the Court may at any time make such temporary restraining order as shall be deemed equitable.

SECTION 10-A. Any person, firm or corporation in this State aggrieved by reason of anything forbidden in this Act may sue therefor in any Circuit Court in the circuit in which the violation or a part thereof took place, to recover any damages assessed as a result of the violation of the terms of this Act, and shall be entitled to recover his or its costs, including reasonable attorney's fees to be fixed by the Court in such action.

SECTION 10-B. In the event of the failure of the State's Attorney and Attorney-General to act promptly, as herein provided, when requested so to do by any aggrieved party, then such party may institute a civil proceeding in his own behalf, or upon behalf of Plaintiff and others similarly situated, as the State's Attorney and the Attorney-General could have instituted under the terms of this Act.

SECTION 11-A. In any proceeding brought under the terms of this Act, any attorney of record for the Plaintiff may file with the Clerk of the Court in which such action is pending, a petition praying that the defendant or defendants be required to file with the Clerk of said Court exact copies of all documentary evidence, records or data in the possession or under the control of said Defendant or Defendants pertaining to the issues as alleged by the Plaintiff in the cause; and the Circuit Court, upon the presentation to it of such petition, shall determine what part, or all, or any of such evidence shall be produced, and enter an order to that effect. A copy of such order shall be mailed to each Defendant at his, her or its last known address, which shall be deemed sufficient notice and service upon such Defendant or Defendants. Or, the same may be served by mail in the same manner upon the attorney or attorneys of record for the Defendant or Defendants, and this shall be deemed sufficient notice and service upon said Defendant or Defendants.

SECTION 11-B. If said Defendant or Defendants shall fail to file with the Clerk of the Court in which such action is pending said copy or copies of documentary evidence, records or data, and within the time provided in said order, the Court shall adjudge such Defendant or Defendants

guilty of contempt and shall assess a fine of \$100.00 against such of the Defendants for each and every day that such Defendant or Defendants fail to comply with said order, and judgment shall be entered accordingly. And the Plaintiff may collect the same against the Defendant or Defendants with interest thereon and costs, including a reasonable attorney's fee. And the Court shall determine when the judgment is rendered what disposition shall be made of the proceeds collected after the payment of costs, and attorney's fees.

SECTION 12. If any section, sub-section, sentence clause or any part of this Act, is for any reason, held or declared to be unconstitutional imperative or void, such holding or invalidity shall not affect the remaining portions of this Act; and it shall be construed to have been the legislative intent to pass this Act without such unconstitutional, inoperative or invalid part therein; and, the remainder of this Act, after the exclusion of such part or parts, shall be held and deemed to be valid as if such excluded parts had not been included herein.

SECTION 13. Nothing in this Act shall be construed as repealing any other law or parts of laws in reference to any of the matters contained in this Act; and the rights and remedies and provisions herein provided shall be and are hereby declared to be cumulative to all other rights, remedies and provisions now provided under the laws of the State of Florida.

SECTION 14. This Act shall become effective immediately upon its becoming a law.

Approved by the Governor June 9, 1937.

Filed in Office Secretary of State June 10, 1937.

EXHIBIT "2".

IN THE UNITED STATE DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, etc., *et al.*,
Complainants,

vs.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, *Defendants.*

Order.

This cause coming on to be heard and the same having
been argued by counsel for the respective parties, and the
Court having inspected the record and the briefs filed;
It is ordered:

1st. That the application for interlocutory injunction be
and the same is granted.

2nd. That the defendants, Cary D. Landis, individually
and as Attorney General for the State of Florida; E. Dixie
Beggs, Jr., individually and as State Attorney for the First
Judicial Circuit of Florida; O. C. Parker, Jr., individually
and as State Attorney for the Second Judicial Circuit of
Florida; A. K. Black, individually and as State Attorney
for the Third Judicial Circuit of Florida; William A. Hal-
lowes, III, individually and as State Attorney for the
Fourth Judicial Circuit of Florida; J. W. Hunter, individu-
ally and as State Attorney for the Fifth Judicial Circuit of
Florida; Chester B. McMullen, individually and as State
Attorney for the Sixth Judicial Circuit of Florida; Murray
Sams, individually and as State Attorney for the Seventh
Judicial Circuit of Florida; J. C. Adkins, individually and
as State Attorney for the Eighth Judicial Circuit of Flor-
ida; Murray W. Overstreet, individually and as State At-

torney for the Ninth Judicial Circuit of Florida; L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. Stubbs, individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; John H. Carter, Jr., individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louis F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; and each of them individually and in their respective capacity as officials of the State of Florida, charged by said State Statute with the enforcement of the provisions thereof, be enjoined and restrained until the further order of this Court from bringing directly or indirectly any proceeding at law or in equity for the purpose of enforcing said State Statute against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into by the complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizen or resident of the State of Florida the penalties of said Statute in the event such citizen and resident desires to carry out their contracts with the American Society of Composers, Authors and Publishers, or complainants, or others similarly situated, and from prosecuting criminally the complainants, their representatives or agents or any of them or others similarly situated for doing any act or thing to detect infringements and to enforce their respective rights under the Copyright Act in the Federal Court of the State of Florida or elsewhere, and generally from doing any act or thing to carry out or enforce any of the provisions of said State Statute.

3rd. That the motion made by the defendants to dismiss the bill of complaint be and the same is denied.

4th. That the defendants be given thirty (30) days from the date hereof to answer.

This order is made conditional upon the plaintiffs filing herein within thirty (30) days a bond in the sum of five thou-

said (\$5,000.00) dollars conditioned upon the payment to the defendants of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined by this order; said bond to be approved by the Clerk of the United States Court for the Northern District of Florida.

Done and ordered this the 4th day of April, A. D. 1938.

(S.)

RUFUS E. FOSTER,
Circuit Judge.

(S.)

LOUIE W. STRUM,
District Judge.

(S.)

A. V. LONG,
District Judge.

EXHIBIT "3".

IN THE SUPREME COURT OF THE UNITED STATES.

CARY D. LANDIS, Individually and as Attorney General of the State of Florida, *et al.*, *Appellants*,

vs.

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers, *et al.*, *Appellees*.

Suggestion of Death of Cary D. Landis.

Come now the appellant State's Attorneys, being the sole surviving appellants, and respectfully suggest to the Court the death of their former co-appellant, co-defendant in the Court below, Cary D. Landis, who departed this life May 10, 1938.

TYRUS A. NORWOOD,
Assistant Attorney General
of the State of Florida;

ANDREW W. BENNETT,

LUCIEN H. BOGGS,

Attorneys for appellant State's Attorneys.

EXHIBIT "4".

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE NORTHERN DISTRICT OF FLORIDA,
GAINESVILLE DIVISION.

Equity No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants,

vs.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al.*, *Defendants.*

This cause came on for hearing in Pensacola, Florida, on July 11th, 1938, before Honorable Rufus E. Foster, Circuit Judge, Honorable Louie W. Strum and Honorable A. V. Long, District Judges, upon motion of the defendants State Attorneys of the State of Florida to dismiss the cause, and upon motion of the plaintiffs to file supplemental bill, which motions were argued by counsel for the respective parties.

It is the opinion of the Court that the State Attorneys filing the motion to dismiss the cause are necessary parties defendant to the suit and, therefore, the cause did not abate as to them upon the death of said Honorable Cary D. Landis. Said motion to dismiss is denied.

It is also the opinion of the Court that the supplemental bill, for which leave to file is asked, in effect substitutes Honorable George Couper Gibbs as a party defendant in the place of Honorable Cary D. Landis, deceased. On authority of *ex parte* LaPrade, 289 U. S. 444, said motion is denied.

(Sgd.)

RUFUS E. FOSTER,
United States Circuit Judge.

(Sgd.)

LOUIE W. STRUM,
United States District Judge.

(Sgd.)

A. V. LONG,
United States District Judge.

EXHIBIT "5".

STATE OF FLORIDA,
Office of the Attorney General,
Tallahassee.

March 7, 1938.

Honorable Rufus E. Foster,
Judge, United States
Circuit Court of Appeals,
New Orleans, Louisiana.

Re Gene Buck *et al.* vs. State of Florida *et al.*

DEAR JUDGE FOSTER:

Since returning from New Orleans I have been thinking that a statement I made before you in the argument of the above case to the effect that "if the plaintiffs in this case sued for an infringement of their copyrights in the Federal Courts within the State of Florida, that the Attorney General and State's Attorneys would not prosecute them", was not absolutely clear.

In order to be fair to the Court, I would like to state that what I meant by the above remark was that the Attorney General and the State's Attorneys of this State would not prosecute any of the individual complainants if they brought suit in the Federal Courts of this State against persons residing within the State for infringement of copyrights, but if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General and State's Attorneys would be compelled to prosecute it under the provisions of Section 1 of the Act, regardless of whether the suit was brought in the State or Federal Courts.

Yours very truly,

TAN-a.

Assistant Attorney General.

(Signed)

CARY D. LANDIS,

Attorney General,

By TYRUS A. NORWOOD,

CC: Hon. A. B. Long, Gainesville, Florida.

Hon. Louis W. Strum, Jacksonville, Florida.

Hon. Frank Wideman, West Palm Beach, Florida.

EXHIBIT "6".

STATE OF FLORIDA,

Office of the Attorney General,

Tallahassee.

August 12, 1938.

Messrs. Wideman, Wardlaw & Caldwell,
Attorneys at Law,
West Palm Beach, Florida.

Re Buck *et al.* vs. Landis, *et al.*

Attention Mr. Caldwell.

GENTLEMEN:

There are enclosed herewith copies of papers which we
have today filed in the United States Supreme Court.

The Record was sent to the Clerk on yesterday so I am
informed by Mr. Hill.

Very truly yours,

GEORGE COUPER GIBBS,
Attorney General.

By TYRUS A. NORWOOD,
Assistant Attorney General.

Enc.
TAN:G.

EXHIBIT "7".

UNITED STATES DISTRICT COURT; NORTHERN
DISTRICT OF FLORIDA, GAINESVILLE DIVI-
SION.

Equity No. 12.

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers; CARL FISCHER, INC., G. SCHIRMER, INC., IRVING BERLIN, INC., DEEMS TAYLOR, OLEY SPEAKS, WILLIAM J. HILL, ANNE PAUL NEVIN, ELLA HERBERT BARTLETT and JANE SOUSA,
Complainants,

against

GEORGE COUPER GIBBS, Individually and as Attorney General of the State of Florida; E. DIXIE BEGGS, JR., Individually and as State Attorney for the First Judicial Circuit of Florida; O. C. PARKER, JR., Individually, and as State Attorney for the Second Judicial Circuit of Florida; A. K. BLACK, Individually, and as State Attorney for the Third Judicial Circuit of Florida; WILLIAM A. HALLOWES, III, Individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. HUNTER, Individually and as State Attorney for the Fifth Judicial Circuit of Florida; CHESTER B. McMULLEN, Individually and as State Attorney for the Sixth Judicial Circuit of Florida; MURRAY SAMS, Individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. ADKINS, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; MURRAY W. OVERSTREET, Individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. GRADY BURTON, Individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. WORLEY, Individually and as State Attorney for the Eleventh Judicial Circuit of Florida; ROY D. STUBBS, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. REX FARRIOR, Individually and

as State Attorney for the Thirteenth Judicial Circuit of Florida; JOHN H. CARTER, JR., Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; LOUIS F. MAIRE, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "JOHN DOE" and "RICHARD ROE", *Defendants*.

Proposed Supplemental Bill of Complaint.

The complainants, Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, by their undersigned counsel, bring this their supplemental bill of complaint herein against George Couper Gibbs, individually and as Attorney General of the State of Florida, and the other defendants named in the caption hereinabove, and say:

1. Since the filing of the original bill of complaint herein, certain material facts have occurred, as are hereinafter alleged.

2. The original complaint herein included as a defendant Cary D. Landis, individually and as Attorney General of the State of Florida, who has since departed this life, as will be more fully hereinafter set forth.

3. On the 3rd day of March, 1938, this cause came on for hearing before a Statutory Three-Judge Court, upon the application of the complainants for an interlocutory injunction, and the motion of the defendants to dismiss the bill of complaint. On the 4th day of April, 1938, the Court entered an order granting the application for an interlocutory injunction, enjoining the defendants from enforcing the State Statute described in said bill of complaint, to wit, Chapter 17807, Laws of Florida, 1937, General Laws, Vol. 1, pp. 204-214 inclusive, and denying the motion of the defendants to dismiss the bill of complaint.

4. On the 25th day of April, 1938, the defendants petitioned for the allowance of an appeal from said order of April 5, 1938, to the Supreme Court of the United States. On August 15, 1938, the defendants other than George Couper Gibbs, filed their record on appeal and docketed such appeal in the United States Supreme Court, which said appeal was allowed, and is now pending.

5. Thereafter, on the 10th day of May, 1938, the defendant, Cary D. Landis, who was named a party defendant in said action, individually and as Attorney General of the State of Florida, departed this life, and on the 16th day of May, 1938, George Couper Gibbs became, and is now, the duly appointed, qualified and acting Attorney General of the State of Florida. Said George Couper Gibbs is a citizen and resident of the State of Florida.

6. On August 15, 1938, the above named defendants, other than George Couper Gibbs, as appellants, filed in the United States Supreme Court a "Suggestion of Death" of Cary D. Landis, deceased.

7. During the lifetime of Cary D. Landis, deceased, he was represented by Tyrus A. Norwood as his assistant, who at all times acted on his behalf and under his direction. At all times since the appointment of said George Couper Gibbs, the said Tyrus A. Norwood has continued to act under the direction of said George Couper Gibbs, with the same effect and in the same manner as he acted for the late Cary D. Landis, since the enactment of the said State Statute.

8. The late Cary D. Landis through his said assistant, Tyrus A. Norwood, threatened to enforce the State Statute and the penalties thereof against complainants if they should violate or attempt to violate any of the provisions thereof, and more particularly threatened to prosecute complainants thereunder should they attempt to sue for infringement of their copyrights in any Federal Court in the State of Florida. Such threat was made in open court on

the application for interlocutory injunction, and by the following letter written on March 7, 1938.

"STATE OF FLORIDA,

"Office of the Attorney General,

"Tallahassee.

"March 7, 1938.

"Honorable Rufus E. Foster,
Judge, United States
Circuit Court of Appeals,
New Orleans, Louisiana.

"Re Gene Buck *et al.* vs. State of Florida *et al.*

"DEAR JUDGE FOSTER:

"Since returning from New Orleans I have been thinking that a statement I made before you in the argument of the above case to the effect that 'if the plaintiffs in this case sued for an infringement of their copyrights in the Federal Courts within the State of Florida, that the Attorney General and State's Attorneys would not prosecute them', was not absolutely clear.

"In order to be fair to the Court, I would like to state that what I meant by the above remark was that the Attorney General and the State's Attorneys of this State would not prosecute any of the individual complainants if they brought suit in the Federal Courts of this State against persons residing within the State for infringement of copyrights, but if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General and State's Attorneys would be compelled to prosecute it under the pro-

visions of Section 1 of the Act, regardless of whether the suit was brought in the State or Federal Courts.

"Yours very truly,

"(Signed)

CARY D. LANDIS,

"Attorney General,

By TYRUS A. NORWOOD,

"Assistant Attorney General."

"TAN-a.

"CC: Hon. A. V. Long, Gainesville, Florida.

"Hon. Louis W. Strum, Jacksonville, Florida.

"Hon. Frank Wideman, West Palm Beach, Florida."

9. Upon information and belief, said Tyrus A. Norwood has been instructed by said George Couper Gibbs to act in his capacity as Assistant Attorney General in appearing for the State's Attorneys in this action; the purpose and object of the appearance of said Tyrus A. Norwood in this action since the death of the late Cary D. Landis, has at all times been to have the interlocutory injunction heretofore entered herein vacated so that the said George Couper Gibbs and the said Tyrus A. Norwood and the said defendant State's Attorneys will be free to enforce the terms and provisions of the State Statute against the complainants herein.

10. Said George Couper Gibbs directly and through his assistant, Tyrus A. Norwood, has adopted and continues and threatens to adopt and continue the action of his predecessor Cary D. Landis, deceased, in enforcing the State Statute, which is in violation of the Constitution of the United States; upon information and belief, said George Couper Gibbs, individually and as an official charged with the duties of enforcing said State Statute will enforce said State Statute in each and all of its terms, and the whole thereof, and particularly against these complainants and others similarly situated, individually and as members of the Society, in the event that such complainants and others similarly situated refused to accept or submit to a system of compulsory licensing; and said George Couper Gibbs will enforce the penal and confiscatory provisions of such Statute against

complainants and others similarly situated in the event complainants and others similarly situated attempt to enforce the existing contracts between themselves and the Society and between the Society and citizens and residents of the State of Florida; or license or attempt to license persons, firms or corporations to publicly perform outside of the State of Florida musical compositions, which performances may be reproduced and reperformed within the State of Florida; or enter into license agreements without the State of Florida with residents or citizens of that State for the right or license to perform publicly for profit the musical compositions of the complainants and others similarly situated within the State of Florida; or enter into license agreements within the State of Florida with persons, firms or corporations, residents or citizens of that State, for the purpose of licensing them to publicly perform for profit the musical compositions of complainants and others similarly situated within or without the State of Florida; or take any means to detect infringements of their copyrighted musical works within the State of Florida; or bring any suits for infringement of their copyrights in their respective compositions by means of public performances for profit in the Federal Courts within or without the State of Florida; or fail or refuse to submit to the jurisdiction of the State Courts of Florida; and said George Couper Gibbs has threatened in the event of the aforesaid contingencies, or any of them, to enforce the penalties provided for in said State Statute, and to proceed to prosecute complainants and others similarly situated, their employees and agents, criminally, for an alleged violation of said Statute.

11. There is a substantial need for continuing and maintaining this suit against said George Couper Gibbs, as well as against defendant State's Attorneys.

Wherefore, the complainants pray:

1. That a supplemental writ of subpoena may issue to the said George Couper Gibbs, individually and as Attorney General of the State of Florida, made a party defendant hereto, requiring him to answer the bill of complaint and

this supplemental bill of complaint, fully and truthfully, but not on oath, an oath being hereby waived.

2. That said George Couper Gibbs, individually and as Attorney General of the State of Florida, be enjoined and restrained by temporary and permanent order of injunction of this Court, from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said State Statute, against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into between complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida, the penalties of said Statute in the event such citizens and residents desire to carry out their contracts with Society or complainants and others similarly situated, and from prosecuting criminally the complainants, their representatives or agents, or any of them, or others similarly situated, for doing any act or thing to detect infringement and to enforce their respective rights under the Copyright Act in the Federal Courts of the State of Florida or elsewhere, and generally, from doing any act or thing to carry out or enforce any of the provisions of said State Statute; and that an order to show cause issue herein upon the application of the complainants, directed to the above named defendants, and each of them, requiring them to show cause why a temporary injunction against said George Couper Gibbs, individually and as Attorney General of the State of Florida, should not issue as prayed for herein.

3. That said State Statute, and each and every part and section thereof, be declared, as to said George Couper Gibbs, individually and as Attorney General of the State of Florida, to be unconstitutional, illegal and void, and that a perpetual injunction be issued restraining the enforcement of said State Statute, and each and every part and section thereof, by said George Couper Gibbs, individually and as

Attorney General of the State of Florida, as hereinabove prayed for.

4. That further and general relief be granted as the nature of the complainants' case may require, or to equity may seem just and proper.

WIDEMAN, WARDLAW & CALDWELL,
Solicitors for Complainants.

FRANK J. WIDEMAN,
Of Counsel.

STATE OF NEW YORK,
County of New York, ss:

Gene Buck, being duly sworn, deposes and says:

That he is one of the complainants in the above entitled action;

That he has read the foregoing Supplemental Bill of Complaint, and knows the contents thereof, and is fully familiar with the facts stated therein; that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

GENE BUCK.

Subscribed and sworn to before me this 16 day of September, 1938.

[SEAL.] GEORGE A. HOFFMAN,
Notary Public, State of New York.

Kings County Clerk's No. 387.

New York County Clerk's No. 163.

Kings Co. Register No. 9077.

New York Co. Register's No. 9H159.

My commission expires March 30, 1939.

